

# HOUSE . . . . . No. 1826

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By Mr. O'Flaherty of Chelsea, petition of Eugene L. O'Flaherty relative to the appointment of an impartial physician to examine injured workers in workers' compensation cases. Labor and Workforce Development.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand and Seven.

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### AN ACT RELATIVE TO IMPARTIAL MEDICAL EXAMINERS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 152 of the General Laws, as appearing in  
2 the 2004 Official Edition, is hereby amended by adding after section  
3 9B, the following section:—

4 Section 9C. An administrative judge or administrative law judge  
5 before whom a conference or hearing is scheduled, may appoint a  
6 duly qualified impartial physician to examine and make a report of  
7 the injured employee. The fee paid to the impartial medical physi-  
8 cian for this service shall be a reasonable amount set by the division,  
9 and the insurer shall remit payment directly to the impartial physi-  
10 cian promptly upon receipt of the approved fee. The report of the  
11 impartial physician shall be admissible as evidence in any pro-  
12 ceeding before the department or a member thereof, provided that  
13 the employee and the insurer have seasonably been furnished with  
14 copies thereof.

1 SECTION 2. Section 11A of said chapter, as so appearing, is  
2 hereby amended by striking out subsection 2 and by inserting in  
3 place thereof the following subsection:—

4 (2) Wherever an impartial medical examiner is appointed under  
5 section nine, the impartial examiner shall examine the employee and  
6 make a report. The report of the impartial medical examiner shall,  
7 where feasible, contain a determination of the following:

8     Whether or not a disabling condition exists, (ii) whether or not  
9     any such disability is total or partial and permanent or temporary in  
10    nature, and (iii) whether or not a personal injury alleged or found to  
11    have been arising out of and in the course of the employee's employ-  
12    ment probably caused or was a contributing cause of said disabling  
13    condition. Said report shall also indicate the examiner's opinion as  
14    to whether or not a medical end result has been reached and what  
15    permanent impairments or losses of function have been discovered,  
16    if any. Where the injury claimed is mental or emotional in nature,  
17    such report shall contain the said examiner's opinion as to whether  
18    or nor any disabling mental or emotional condition has as its signifi-  
19    cant or predominant contributing cause, an event or series of events  
20    within the employment.

21     Failure of an employee to report to an impartial medical examina-  
22    tion after due notice and without cause, and failure to submit to such  
23    examiner all relevant medical records, medical reports, medical his-  
24    tories, and any other relevant information requested which are in the  
25    possession of control of the employee without good reason, shall  
26    constitute sufficient cause for suspension of benefits pursuant to  
27    section forty five. The report of the impartial medical examiner  
28    shall be admitted into evidence at the hearing. Either party shall  
29    have the right to engage the impartial medical examiner to be  
30    deposed for purpose of cross-examination. The fact that the impar-  
31    tial examiner has not treated the employee shall not constitute suffi-  
32    cient reason for finding any report of an impartial examiner  
33    inadequate. The fee for the provision of a deposition by any impar-  
34    tial medical examiner engages under this section shall be a reason-  
35    able amount proved by the commissioner, and shall be paid by the  
36    deposing party directly to the physician promptly upon receipt of the  
37    report; provided, however, that if the decision of the administrative  
38    judge is in favor of the employee, the cost of such deposition shall  
39    be added to the amount awarded to the employee and be paid by the  
40    insurer under the provisions of this chapter. In reviewing and  
41    updating said roster, the senior judge shall utilize the criteria devel-  
42    oped by the health care services board pursuant to section thirteen.